IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

SECOND APPEAL NO. 708 OF 2005

Housabai Jyoti Autade..... ... Appellant.

Versus

Vishnu Sitaram Autade & Ors.... ... Respondents.

Mr. L. S. Gaikwad for the Appellant.
Mr. Shrikant Yadav with Mr.Dilip Bodake for Respondent Nos.1 and 2.

CORAM : ANOOP V. MOHTA, J.

DATED : 25TH NOVEMBER, 2005.

P.C.:

Heard.

2. The basic suit filed by the plaintiffs was for possession of the encroached land / suit property from the Defendants after removing the construction of the house and in the alternatively for a compensation.

3. The trial Court has considered the issues

basically in reference to the title of the suit property, principle of acquiescence, and also of adverse possession. All these issues have been answered in favour of the Plaintiffs. In the result, it has been held that the Plaintiffs have title of the suit property and that defendants have encroached upon the said suit property and illegally constructed a building. It has been also held that thee is no question of principles of acquiescence as contended by the defendants. In so far as the plea of adverse possession is concerned, both the court accepted the case of the plaintiffs and observed that defendants are not the owners of the suit property based on the principles of adverse possession.

4. The appellate court on an appeal, preferred only by defendant No.2 and not by other defendants, further confirmed that the original plaintiffs / respondents herein are the owner of the suit property. The appellate court further observed that the defendants failed to prove that they constructed on the mistaken belief that the land belongs to them. The plea of not raising objection to the construction was also rejected. The appellate court has also observed that the suit is not barred by law and therefore granted

and confirmed the decree of possession.

5. After going through the material on record as well as the findings given by both the courts, there is no perversity as such which could be borne out and/or demonstrated by the appellant. The findings of fact arrived at by the courts below based on the material available on record as according to me also within the frame work of law and record. There is no substantial question of law as such which needs to be considered in the present second appeal in view of the above reasoning. Taking all this into account, the present second appeal is dismissed.

Sd/-

(ANOOP V. MOHTA,J.)